

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OSCAR DIAZ-MARTINEZ.

Movant.

V.

UNITED STATES OF AMERICA.

Respondent.

Case No.: 3:16-cv-01672-BEN
3:15-cr-01020-BEN-1

**ORDER DENYING AS MOOT
MOTION TO VACATE, SET ASIDE,
OR CORRECT SENTENCE UNDER
28 U.S.C. § 2255**

On June 10, 2015, Movant Oscar Diaz-Martinez was convicted and sentenced to 30 months in custody for violating 8 U.S.C. §1326. Movant pleaded guilty pursuant to a plea agreement wherein he waived his right to collaterally attack his conviction and sentence. At the sentencing hearing he again waived his right to collaterally attack his conviction and sentence. Notwithstanding his waiver, on June 27, 2016, Movant proceeding pro se filed a Motion to Vacate, Set Aside, or Correct his Sentence pursuant to 28 U.S.C. § 2255. (Docket No. 26.)¹ In short, Movant's motion asks the Court to vacate his sentence and re-sentence him; he did not challenge his conviction. (*See generally* Mot.) (requesting re-sentencing pursuant to *Johnson v. United States*, 135 S.

¹ All docket citations refer to the criminal case docket, No. 15-cr-01020-BEN-1.

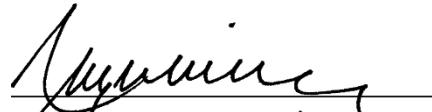
1 Ct. 2551 (2015) on the grounds that his conviction fell under the Residual Clause of the
2 Armed Career Criminal Act). Respondent, the United States (“the government”), filed a
3 response, opposing the motion.

4 The Court takes judicial notice that on May 26, 2017, while Movant’s motion was
5 pending, he was released from the Bureau of Prisons’ (“BOP’s”) custody. *See* Federal
6 Bureau of Prisons Website, *Inmate Locater Detail for Oscar Diaz-Martinez, Register No.*
7 *49557-298, available at https://www.bop.gov/inmateloc/; Qureshi v. Sanders*, 563 F.
8 Supp. 2d 1154, 1156 n.2 (C.D. Cal. 2008) (taking judicial notice of BOP’s “Inmate
9 Locator” website, which showed petitioner’s release from BOP’s custody).

10 As a result, Movant’s motion is moot. *See Aaron v. Pepperas*, 790 F.2d 1360,
11 1361-62 (9th Cir. 1986) (concluding petitioner’s habeas petition moot where petitioner
12 has satisfied his sentence and “merely contests the imposition and duration of his
13 sentence”). Therefore, Movant’s motion is denied.

14 **IT IS SO ORDERED.**

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16 Dated: April 6, 2018

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18 Hon. Roger T. Benitez
19 United States District Judge

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